

REMARKS

Reconsideration and withdrawal of the examiner's rejections under 35 USC § 103, and obviousness type double patenting rejections is respectfully requested in view of the terminal disclaimer submitted herewith and the following remarks. The applicant would like to thank the examiner for her time and kind cooperation in this matter.

35 USC § 103

The examiner has rejected claims 1-4, 12, 14, 15 and 18 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al., (US 6,177,092) in view of Farrell, et al., (US 6,063,390) and Guilbeaux (US 4,929,644).

The examiner asserts that it would have been obvious to combine the bicarbonate and acid in the same chamber when in an anhydrous composition of Lentini, et al., because it has been disclosed in the art that the two components do not react in a dry state and the two components have been disclosed by the art in combination in anhydrous skin care compositions, as supported by Farrell, et al.

The examiner further asserts that it would have been obvious to one of ordinary skill in the art to have used a combination of organophilic clays in the compositions of Lentini, et al., and Farrell, et al., motivated by the desire to incorporate a rheology modifier suitable for cosmetics that thickens the compositions as desired and acts as a biocidal agent and remove the need for other biocidal agents that may cause adverse reactions, as disclosed by Guilbeaux.

The examiner asserts in regards to claims 12 and 14, normally, changes in result effective variables are not patentable where the difference involved is one of degree, not of kind; experimentation to find workable conditions generally involves the application of no more than routine skill in the art. See MPEP 2144.05. It would have been obvious to one of ordinary skill in the art to use a particular particle size motivated by the desire to obtain a composition with optimal efficacy when the components are mixed and react with one another. Applicants respectfully traverse this rejection.

Lentini, et al., relate to a self-foaming system having two components that are maintained in separate containers or separate compartments in the same container so that the components produce carbon dioxide when they commingle with each other upon being dispensed from their individual containers or compartments. See col. 4, lines 17-19. In another example of Lentini, et al., an anhydrous product contained in a sachet containing the (reactive) components of the system can be added to a bath (col. 3, lines 48-53). The skilled person reading Lentini, et al., would understand that the sachet must be a "unitary package with chambers" separately containing each of the acid and bicarbonate so as to prevent their premature reaction with each other prior to being added to a bath.

Farrell, et al., relates to a wiping article containing an effervescent cleanser composition held within a unitary pouch (abstract). Farrell, et al., teaches that the blend must be an anhydrous dry powder ostensibly to avoid any premature reaction prior to the user applying the later wetted wiping article to the skin (col. 1, lines 40-41). Farrell, et al., teaches away from reducing the degree of intimate contact of the dry reactive materials in the anhydrous carrier required in instant claim 1(c) because Farrell teaches that the desired result of the rapid effervescence created by the intimate blend being contacted with water is the production of "copious" lather. In other words, the skilled person would not have been motivated to alter the intimate contact of the dry powder in Farrell, et al., by suspending such powder in an inert medium due to the teaching away discussed above.

Guilbeaux relates to a thickened organic composition having two organophilic clays separately providing viscosity building and biocidal activity (see abstract).

Applicants respectfully submit that a proper prima facie case under § 103(a) is still not made out with respect to amended claim 1 at least because the disclosure of Lentini, et al., in view of Farrell, et al., and Guilbeaux fails to disclose a first component in a dispersed phase capable of chemically reacting with a second component and wherein both the first and second components are contained in a first chamber. Moreover, the skilled person would not combine Farrell, et al.'s, teaching of an intimate quick reacting mixture with Guilbeaux's organic clays for the reasons stated above.

The examiner has rejected claims 10 and 11 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al., (US 6,177,092) in view of Farrell, et al., (US 6,063,390) and Guilbeaux (US 4,929,644) as applied to claims 1-4, 12, 14, 15 and 18 in further view of Gentile, et al., (US 6,161,729). Applicants respectfully traverse the rejection.

As discussed previously, Gentile, et al., relates to a dual chamber dispenser and contains no disclosure regarding the contents of the dispenser. Applicants respectfully submit that Gentile, et al., does not remedy the deficiencies of Lentini, et al., Farrell, et al., and Guilbeaux with respect to claims 10 and 11 which depend from claim 1.

The examiner has rejected claims 5-6 and 8 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al., (US 6,177,029) in view of Farrell, et al., (US 6,063,390) and Guilbeaux (US 4,929,644) as applied to claims 1-4, 12, 14, 15 and 18 in further view of Hall, et al., (US 5,316,054). Applicants respectfully traverse this rejection.

The examiner has rejected claim 9 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al., (US 6,177,092) in view of Farrell, et al., (US 6,063,390) and Guilbeaux (US 4,929,644) as applied to claims 1-4, 12, 14, 15 and 18 in further view of Pettengill (US 5,020,694). Applicants respectfully traverse this rejection.

As discussed previously, Hall, et al., relates to a self-contained package for housing dispensing and diluting concentrated liquid. Applicants respectfully submit that Hall, et al., does not remedy the deficiencies of Lentini, et al., Farrell, et al., and Guilbeaux with respect to claims 5-6 and 8 which depend from claim 1.

Pettengill discloses multi-cavity dispensing containers but says nothing about the composition contained therein. Pettengill therefore fails to remedy the deficiencies of Lentini, et al., Farrell, et al., and Guilbeaux with respect to claim 9 which depends from claim 1.

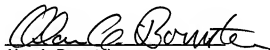
Obvious-Type Double Patenting

Claims 1-15 and 18 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11, 13, and 16-17 of codepending Application No. 10/730,218 in view of Lentini, et al., (US 6,177,092). The rejection is maintained in regards to claims 1-12, 14, 15 and 18. Claims 7 and 13 are cancelled. In response, applicants submit a terminal disclaimer for copending application no. 10/730,218.

CONCLUSION

In light of the above remarks and terminal disclaimer, applicants submit that the claims now pending in the present application are in condition for allowance. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan A. Bornstein", is written over a horizontal line.

Alan A. Bornstein
Registration No. 40,919
Attorney for Applicant(s)

AAB/ss
(201) 894-2180